



STATE OF CALIFORNIA

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August 15, 1997

Hon. Dick Frank, San Luis Obispo County Assessor  
County Government Center, Room 100  
San Luis Obispo, CA 93408  
Attn: Barbara Edginton, Assessment Analyst II

RE:

Dear Mr. Frank:

This is in response to your letter of March 26, 1997 addressed to Kris Cazadd concerning the change in ownership consequences of the conversion of the Ragged Point Inn from a general partnership to a California limited partnership. I have reviewed the documents accompanying your letter, including a letter dated February 12, 1997 from Dibby Allan Green of the taxpayer's attorney's office to Deputy County Assessor Mary Ann Hess, in which Ms. Green states that the "nature of the partnership law" dictates that \_\_\_\_\_ as a general partnership, is the same entity after it converts to a limited partnership and, therefore, there is no transfer of real property from the general partnership to the limited partnership as a result of the conversion.

For the reasons set forth below, it is our view that there is a transfer of ownership of the partnership real property when a general partnership converts to a limited partnership, but the transfer is excluded from change in ownership for property tax purposes pursuant to Revenue and Taxation Code section 62(a)(2) because the partnership interests in the real property are identical before and after the conversion. However, the partners become "original coowners", and pursuant to section 64(d) subsequent transfers resulting in a transfer of cumulatively more than 50 percent of the total partnership interests will constitute a change in ownership of all real property previously excluded from change in ownership under section 62(a)(2) will be reappraised.

Factual Background

As reflected by the Statement of Partnership, the general partnership known as \_\_\_\_\_ agreed, effective August 26, 1996, to convert from a general partnership to a California limited partnership. Prior to the conversion, the general partners and their respective interests

were: the Trust with as sole beneficiary, 53%; the  
 Management Trust with as the sole beneficiary, 2%; 15%;  
 , D.D.S., 15%; and 15%.

is the sole trustee of the Family Trust and she and the other three  
 individuals named above are the trustees of the Management Trust. Upon conversion to  
 the limited partnership, the Management Trust was named as the general partner and the  
 other parties were named as limited partners with each holding the same respective partnership  
 interests. The Management Trust was formed for the express purpose of serving as a  
 general partner of the general partnership in contemplation of the conversion to  
 the limited partnership with it being the sole general partner.

### Law and Analysis

#### Conversion to limited partnership

It is our view that when a general partnership converts to a limited partnership the ownership of property transfers from one entity (the general partnership) to another entity (the limited partnership). Revenue and Taxation Code Section 61(j) states that change in ownership includes the transfer of any interest in real property between a partnership and any other person, in this case, a limited partnership. Property Tax Rule 462.180(a) is to the same effect: the transfer of any interest in real property to a legal entity, such as a limited partnership, is a change in ownership of such real property transferred.

Ms. Green in her letter describes the conversion in the following terms: "the general partners unanimously decided to amend the partnership agreement to allow limited partners under the California Revised Uniform Limited Partnership Act." Under California law a limited partnership is formed and exists as a legal entity only if a certificate of limited partnership has been filed with the Office of the Secretary of State. You have indicated that a certificate of limited partnership has been filed. Once formed, a limited partnership is a legal entity distinct from a general partnership and has legal rights and obligations different from those of a general partnership. For change in ownership purposes, limited partnerships have been regarded as separate legal entities from the inception of Article XIII A.

Ms. Green also cites as support for a "same-entity" position the recital of the grant deed transferring the subject property from a general partnership, to  
 , a limited partnership, which recital states that the grantor and the grantee are the same entity and that the deed is only for the purpose of reflecting in the public record a change of the partnership name. However, the deed language cannot contravene the applicable laws governing partnerships, limited partnerships, and changes in ownership. For the reasons stated above, conversion of a general partnership to a limited partnership creates a new legal entity and results in a transfer or ownership of the partnership's real property for property tax purposes.

#### Transfer of real property between legal entities - Exclusion from change in ownership.

A conversion by a general partnership to a limited partnership is effectively a creation of a new entity and results in the transfer of real property from one entity to the new entity. The limited partnership now holds present beneficial and legal title to the partnership's property. Although transfers of real property between legal entities such as partnerships and limited partnerships usually result in changes in ownership, an exclusion applies if the transferors are the same persons or entities as the transferees and their proportional ownership interests in the real property remain the same after the transfer. After conversion to the limited partnership, the partners and their respective proportional partnership interests remained the same and pursuant to section 62(a)(2) the transfer is excluded from a change in ownership.

Although section 62(a)(2) excludes the conversion from a change in ownership, after the transfer the partners become "original coowners", and pursuant to section 64(d) subsequent transfers resulting in a transfer of cumulatively more than 50 percent of the total partnership interests will constitute a change in ownership and reappraisal of all real property previously excluded from change in ownership under section 62(a)(2).

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,



Lou Ambrose  
Tax Counsel

LA:ba

cc: Mr. Jim Speed, MIC:63  
Mr. Dick Johnson, MIC:64  
Ms. Jennifer Willis, MIC:70

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JUL 16 1997  
STATE BOARD OF TAXATION

220.0510 **Partnership.** Where a partnership agreement does not provide for continuation of the partnership, the death of a partner results in a dissolution of the partnership. In a two-person partnership in which each partner holds a 50 percent partnership interest, if an heir succeeds to the partnership interest of a deceased partner, there is an immediate transfer of the deceased partner's partnership interest upon his or her death but the heir does not become a partner. The transfer of the deceased partner's partnership interest constitutes a transfer of 50 percent or less of the total partnership interest, and there is no change in ownership pursuant to Revenue and Taxation Code section 64(a). Additionally, if the heir is a spouse, such a transfer would also be excluded by Revenue and Taxation Code section 63.

If the surviving partner and the heir become equal partners, they effectively form a new partnership in one of two ways, either of which is a change in ownership of the property involved. The first is by a transfer from the dissolved partnership with the surviving partner as sole partner to the new partnership with the surviving partner and heir as partners. The proportional ownership interests do not remain the same after the transfer. The second involves a transfer of the real property from the partnership to the surviving partner and to the heir in equal shares and subsequent transfers of the real property by the parties to the new partnership with themselves as equal partners. Although the parties would hold the same proportional interests before and after each transfer and the Revenue and Taxation Code section 62(a)(2) could be applicable, the transfers would result in changes in ownership under the step transaction doctrine.

If the partnership liquidates, there is a change in ownership of the real property, but the section 62(a)(2) exclusion is applicable. Upon dissolution, the surviving partner is empowered to wind up the partnership by statutory authority, but he or she receives no vested or beneficial interest in the deceased partner's share of the partnership or its assets. When the real property is distributed to the surviving partner and the heir, the proportional ownership interests in the real property transferred are the same. C 4/11/97. (M99-2)